

ORDINANCE NO. 2022-78

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY IN CASE NO. ZC-22-33, BY REZONING APPROXIMATELY 120 ACRES OF LAND, GENERALLY LOCATED NEAR THE 4100 BLOCK OF STATE HIGHWAY 21, APPROXIMATELY 1,400 FEET NORTH OF HARRIS HILL ROAD FROM “P” PUBLIC AND INSTITUTIONAL DISTRICT TO “LI” LIGHT INDUSTRIAL DISTRICT, OR, SUBJECT TO CONSENT OF THE OWNER, ANOTHER LESS INTENSE ZONING DISTRICT CLASSIFICATION; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE **SUBJECT TO RESTRICTIVE COVENANTS ON WASTE-RELATED USES**

RECITALS:

1. On August 23, 2022, the Planning and Zoning Commission of the City of San Marcos held a public hearing regarding a request to change the zoning designation from “P” Public and Institutional District to “LI” Light Industrial District for approximately 120 acres of land, generally located near the 4100 Block of State Highway 21, approximately 1,400 feet north of Harris Hill Road (the “Property”), as described in Exhibit A, attached hereto and made a part hereof for all purposes.
2. The Planning and Zoning Commission approved a recommendation 7-0 to the City Council regarding the request.
3. The City Council held a public hearing on September 20, 2022, regarding the request.
4. All requirements pertaining to Zoning Map amendments have been met.
5. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. The Official Zoning Map of the City is amended to rezone the Property, as described in Exhibit A, from “P” Public and Institutional District to “LI” Light Industrial District.

SECTION 2. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 3. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 4. This ordinance will take effect after its passage, approval and adoption on second reading and the recording of a restrictive covenant agreement concerning the Property in substantially the form in Exhibit B, attached hereto and made a part hereof.

PASSED AND APPROVED on first reading on September 20, 2022.

PASSED, APPROVED AND ADOPTED on second reading on May 2, 2023.

Jane Hughson
Mayor

Attest:

Elizabeth Trevino
City Clerk

Approved:

Sam Aguirre
City Attorney

EXHIBIT A

Westwood

COUNTY OF HAYS
STATE OF TEXAS

120.06 ACRES
OUTSIDE CLEAR ZONE ESM'T

PROJ. 37461.00
SPOONER TRACT

FIELD NOTE DESCRIPTION of a 120.06 acre tract of land situated within the Juan Martin Veramendi Survey, Abstract No. 17, and the Thomas G. McGehee Survey, Abstract No. 11, Hays County, Texas, being a portion of the tracts conveyed in Document No. 21046352, Hays County Official Public Records, and Volume 965, Page 376, said Official Public Records, being out of the residue of a called 100.0 acre tract of land described in Vol. 154, Pg. 503, Hays County Deed Records and the residue of a called 132 and 60/100 acres of land described in Book E, Page 203, said Deed Records; in all, said 120.06 acre tract of land being more particularly described as follows:

BEGINNING at a 1/2" iron rod found w/ illegible cap on the northwest right-of-way line of State Highway 21, a/k/a Airport Highway or Old San Antonio Road, a variable width state highway right-of-way recorded in Volume 117, Page 501, said Deed Records, for the south corner of Tract 1, Dove Meadow, recorded in Volume 7, Page 347, Hays County Plat Records, coincident with the east corner of said residue of 132 and 60/100 acres and the east corner and **POINT OF BEGINNING** of the herein described tract of land, from whence another 1/2" iron rod found bears North 45° West, 2.0 feet;

THENCE, along the northwest line of said State Highway 21, South 50° 22' 50" West, 741.74 feet to a 1/2" iron rod with orange "WESTWOOD 6530" cap set over an iron rod with aluminum cap found approximately 3 feet deep for the east corner of a 45.762 acre Clear Zone Easement described in Amended Award of Special Commissioners, recorded in Volume 509, Page 651, Hays County Official Public Records;

THENCE, along the northeast line of said Clear Zone Easement, North 39° 09' 13" West, 1483.78 feet to a 1/2" iron rod with orange "WESTWOOD 6530" cap set over an iron rod with aluminum cap found approximately 3 feet deep for the north corner of said Clear Zone Easement;

THENCE, along the northwest line of said Clear Zone Easement, South 42° 18' 56" West, passing at 850.03 feet an iron rod with aluminum cap found for the north corner of a called 2.923 acre tract owned in fee simple by the City of San Marcos, described in said Amended Award of Special Commissioners, recorded in Volume 509, Page 651, Hays County Official Public Records, at 925.03 feet an iron rod with aluminum cap found for the west corner of said 2.923 acre tract, and continuing in all a total distance of 1750.00 feet to a 1/2" iron rod with orange "WESTWOOD 6530" cap set over an iron rod with aluminum cap found approximately 3 feet deep for the west corner of said Clear Zone Easement;

THENCE, along the southwest line of said Clear Zone Easement, South 56° 12' 55" East, 1292.03 feet to an iron rod with aluminum cap found on the northwest right-of-way line of State Highway 21 for the south corner of said Clear Zone Easement;

THENCE, along the northwest line of said State Highway 21, South 50° 22' 50" West, 908.49 feet to a TxDOT type I concrete monument found for an angle point;

THENCE continuing along said northwest line of State Highway 21, South 48° 53' 58" West, 276.47 feet to a 1/2" iron rod with orange "WESTWOOD 6530" cap set at the intersection of said State Highway 21 and

Westwood

FM Highway 110 (not yet constructed) for the east corner of a called 0.018 acre tract of land conveyed unto Hays County known as Parcel 14N, Part 2, recorded in Document No. 17041297, said Official Public Records, from whence a 1/2" iron rod found bears South 84° East, 1.3 feet;

THENCE, *along the north cutback line of the intersection of said State Highway 21 and FM Highway 110, North 86° 42' 11" West, 58.89 feet to a 1/2" iron rod with cap stamped "MCGRAY & MCGRAY" found on the northeast line of a called 3.346 acre tract of land conveyed unto Hays County known as Parcel 24N, recorded in Document No. 17039462, said Official Public Records, for the west corner of said 0.018 acre tract and an angle point of the herein described tract of land;*

THENCE, *along the northeast line of said FM Highway 110, North 46° 36' 46" West, passing at 795.06 feet a 1/2" iron rod with cap stamped "JE GARON RPLS 4303" found for the common north corner of said 3.346 acre tract and east corner of a called 2.830 acre tract conveyed unto Hays County known as Parcel 15N, recorded in Document No. 17027886, said Official Public Records, and continuing in all a total distance of 920.55 feet to a found 1/2" iron rod with cap stamped "MCGRAY & MCGRAY" for the south corner of a called 19.065 acre tract conveyed unto Hays County known as Parcel 14N, Part 1, recorded in Document No. 17041297, said Official Public Records, for an angle point of said FM Highway 110 and the herein described tract of land;*

THENCE *along the east line of said FM Highway 110 and said 19.065 acre tract, the following courses:*

North 27° 28' 44" West, 360.55 feet to a 1/2" bent iron rod,

North 06° 21' 14" East, 392.47 feet to a set 1/2" iron rod with cap stamped "WESTWOOD 6530" for the beginning of a tangent curve to the right,

Along the arc of said curve, having an arc length of 665.31 feet, a radius of 3275.00 feet, a delta of 11° 38' 23", and a chord bearing and distance of North 12° 10' 25" East, pass the approximate common northwest line of said residue of 132 and 60/100 acres and southeast line of said residue of 100.0 acres, and continuing in all a total distance of 664.17 feet to a found 1/2" iron rod for a point of tangency,

North 16° 34' 01" East, 290.02 feet to a set 1/2" iron rod with cap stamped "WESTWOOD 6530" for the beginning of a tangent curve to the right

Along the arc of said curve, having an arc length of 588.46 feet, a radius of 3295.00 feet, a delta of 10° 13' 57", and a chord bearing and distance of North 28° 09' 28" East, 587.68 feet to a found 1/2" iron rod for a point of tangency, and

North 33° 16' 27" East, 1551.31 feet to a found 1/2" iron rod with cap stamped "MCGRAY & MCGRAY" for the west corner of a called 97.04 acre tract conveyed unto Harris Hill Residential Land Holdings LLC, recorded in Document No. 20032223, said Official Public Records, coincident with the south corner of a called 11.736 acre tract conveyed unto Hays County known as Parcel

13N, recorded in Document No. 16008150, said Official Public Records, for the north corner of the herein described tract of land;

THENCE, along the northeast line of the herein described tract of land, South 45° 24' 07" East, pass at 1593.39 feet a 1" bent iron pipe (0.7 feet right of line) at the common southeast line of said 97.04 acre tract and northwest line of said Dove Meadow, pass at 2161.86 feet a ½" iron rod found with cap stamped "BYRN SURVEY" (0.7 feet right of line) at the common southeast line of Tract 2 and northwest line of Tract 1, Dove Meadow, and continuing in all a total distance of 2837.11 feet to the **POINT OF BEGINNING**.

Containing, in all, 120.06 acres or 5,229,600 square feet of land, more or less. Bearings based on the Texas State Plane Coordinate System for the South Central Zone, 4204 (NAD83, 2011 Adjustment).



**JUAN MARTIN VERAMENDI SURVEY
ABSTRACT NO. 17**

**THOMAS G. MOENEHE SURVEY
ABSTRACT NO. 11**

HAYS COUNTY

CALDWELL COUNTY

James C. Spurgeon and John E. Spurgeon
Resident of Calles 100 Acres
Doc. No. 2184352
Vol. 154, Pgs. 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049,

EXHIBIT B
Form of Restrictive Covenant Agreement
RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this "**Agreement**") is made and entered into as of the _____ day of _____, 2022, by and between NP San Marcos Holdings, LLC., (the "**Owner**"), and the City of San Marcos, Texas (the "**City**").

RECITALS:

A. Owner is the owner of a tract of land totaling approximately 165.82 acres situated in Hays County, Texas, more particularly described in Exhibit "A", attached hereto (the "**Property**").

B. Owner acknowledges an approximate 45.76 acre portion of the Property has been provided to the City of San Marcos as a Clear Zone Easement described in Vol. 509, Pg. 641, Real Property Records of Travis County, Texas and amended in Vol. 509, Pg. 651, Real Property Records of Hays County, Texas (the "**Easement Property**").

C. Owner and the City desire to subject the Property, SAVE AND EXCEPT the Easement Property, (the "**Restricted Property**"), to the terms of this Declaration.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Owner and the City do hereby agree as follows:

1. Establishment of Restrictive Covenant. The Parties hereto agree and acknowledge that the Restricted Property shall be held, sold, transferred, conveyed and occupied subject to the following restrictive covenants. The following use is a prohibited use on the Restricted Property:

- i. **Waste-Related Service Use Category** - Characterized by uses that receive solid or liquid wastes from others for transfer to another location and uses that collect sanitary wastes or that manufacture or produce goods or energy from the composting of organic material. Waste related service includes the following uses.
 - a. Animal waste processing.
 - b. Landfill.
 - c. Manufacture and production of goods from composting organic material.
 - d. Outdoor collection and storage of recyclable material.
 - e. Scrap Materials (indoor storage).
 - f. Solid or liquid waste transfer station, waste incineration.

2. No Consent Required. The Owner and the City each hereby represent and warrant to the other that they have full requisite power and authority to enter into this Agreement without the joinder or further consent of any other party, including without limitation that of any lender, lienholder or tenant, and that this Agreement will not be subordinate to any existing lien or other monetary encumbrance.

3. Remedies. The City may pursue any remedies available at law or in equity to enforce the provisions of this Agreement, including the recovery of reasonable attorney's fees and court costs.

4. No Waiver. The failure of the City or Owner to avail itself of any of the privileges, rights, covenants, agreements, terms and conditions of this Agreement for any period of time or at any time shall not be construed or deemed to be a waiver thereof, and nothing herein contained, nor anything done or omitted to be done by the City or Owner pursuant hereto, shall be deemed a waiver by the other of any of its rights and remedies hereunder or under the laws of the State of Texas. The enforcement of any right or remedy hereunder by the City, either prior to, simultaneously with, or subsequent to any other action taken hereunder, shall not be deemed an election of remedies.

5. Modification. This Agreement may not be modified or amended unless such modification or amendment has been reduced to writing approved by the city council of the City and signed by all of the then-existing owners of the Property or portions thereof, and by the City, and has been recorded in the Official Public Records of Hays County, Texas.

6. Binding Effect. The obligations created hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, heirs and assigns.

7. Partial Invalidity. If any provision of this Declaration shall be or become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

[SIGNATURES ON NEXT PAGE]

NP San Marcos Holdings, LLC.:

By: _____

Name: _____

Title: Manager_____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF _____ §

THIS INSTRUMENT was acknowledged before me this ____ day of _____, 2022,
by _____, _____ of _____, in such capacity,
on behalf of said entity.

Notary Public, State of Texas

CITY:

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me this ____ day of _____, 2022,
by _____, _____ of the City of San Marcos, in such capacity, on behalf
of said municipality.

Notary Public, State of Texas